

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: May 26, 2016

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Agreement for Utilities and Construction Between the State of Alabama and City of Huntsville

Exact Wording for the Agenda:

Agreement for Utilities and Construction Between the State of Alabama and City of Huntsville, Alabama regarding Project STPHV-8507 (); Project Reference Number 100062237; Project Reference Number 100062238; Huntsville Northern Bypass from 1,500 Feet East of SR-1 (US-231/431) Intersection to Winchester Road in the City of Huntsville

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

This project will be administered by the State and all cost will be financed with 80 percent Federal funds and with 20 percent City funds. The city will be responsible for its proportional share of any cost overruns.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head:  _____

Date: 16 May 16

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Planning

Council Meeting Date: 5/26/2016

Department Contact: Kimberly Gosa

Phone # 427-5115

Contract or Agreement: Agreement

Document Name: Agreement for Utilities and Construction/N Bypass Project

City Obligation Amount: \$5,376,400

Total Project Budget: \$26,882,000

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select...

Select...

Grant-Funded Agreements

Select...

Grant Name:

Department	Signature	Date
1) Originating	<i>M. Gosa</i>	5/18/16
2) Legal	<i>Mary C. Cates</i>	5/18/16
3) Finance	<i>Rachel Biggs</i>	5/18/16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)	<i>Sh K.</i>	5/18/16
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 16- _____

BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with the State of Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement for Utilities and Construction Between the State of Alabama and the City of Huntsville; Project STPHV-8507(); Project Reference Number 100062237; Project Reference Number 100062238; Huntsville Northern Bypass from 1,500 Feet East of SR-1 (US-231/431) Intersection to Winchester Road in the City of Huntsville" consisting of (seven)7 pages plus two(2) additional pages consisting of Exhibit M and Exhibit N, and the date of May 26, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of May, 2016

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of May, 2016

Mayor of the City of Huntsville,
Alabama

**AGREEMENT
FOR
UTILITIES AND CONSTRUCTION

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF HUNTSVILLE, ALABAMA**

**Project STHV-8507 ()
Project Reference Number 100062237
Project Reference Number 100062238
Huntsville Northern Bypass from 1,500 Feet East of
SR-1 (US-231/431) Intersection to Winchester Road
in the City of Huntsville**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Huntsville, Alabama, hereinafter referred to as CITY; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as the FHWA; and

WHEREAS, a Transportation Improvement Program has been developed for the Huntsville Urbanized Area and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the CITY to cooperate toward the implementation of the Transportation Improvement Program; and

WHEREAS, the STATE and CITY desire to cooperate in a utility and construction program for the Huntsville Northern Bypass from 1,500 feet east of SR-1 (US-231/431) intersection to Winchester Road in the City of Huntsville.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) This Agreement will cover utilities and all aspects of construction for the proposed improvements, including construction engineering and inspection during the course of the work, all in accordance with plans approved by the STATE.
- (2) Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization by FHWA. Any deficiency in Federal Aid, or overrun in construction costs will be borne by the CITY. In the event of an under run in construction costs, the amount of Federal Aid Funds will be 80 percent of eligible costs.
- (3) The Project will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds. The estimated cost and participation by the various parties are as follows:

	<u>Total Estimated</u>	<u>Estimated Federal Funds</u>	<u>Estimated CITY Funds</u>
Utilities	\$1,882,000	\$1,505,600	\$376,400
Construction, including engineering and inspection	<u>\$25,000,000</u>	<u>\$20,000,000</u>	<u>\$5,000,000</u>
TOTAL	\$26,882,000	\$21,505,600	\$5,376,400

It is understood that the above is an estimate only, and in the event the final cost exceeds the estimate, the CITY will be responsible for its proportional share.

- (4) Any cost for work not eligible for Federal reimbursement will be financed 100 percent by the CITY, which payment will be reflected in the final audit.
- (5) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under State law will be considered as a part of the Project cost and will be paid as provided herein, with the

CITY paying its proportional share. The STATE will not be liable for utility expenses which are not eligible for STATE reimbursement or payment under State law.

- (6) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE and FHWA.

- (7) The construction of the improvements will be by contract and the STATE will be responsible for advertisement and receipt of bids and for the award of the contract.

Following receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated construction cost as reflected by the bid of the successful bidder plus engineering and inspection cost, and the CITY will promptly pay this estimated cost before award of the contract. The STATE will not award the contract until it is in receipt of the estimated cost payable by the CITY as reflected by the bid of the successful bidder, plus the engineering and inspection cost. All required off-site testing shall be the responsibility of the Alabama Department of Transportation. All on-site engineering, inspection, and testing (including obtaining and delivery of test specimens to the Alabama Department of Transportation testing facility) shall be the responsibility of the STATE or its designated representative.

- (8) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the facility which is not part of the State Highway Maintenance System.

- (9) It is clearly understood by the parties that the STATE does not commit any STATE or Federal funds beyond those mentioned herein.

- (10) The CITY agrees that in the event the FHWA determines, under its rules and/or regulations that Federal funds expended on this Project (including but not limited to delay

of the projects, or delay of projects contemplated to be developed and accomplished in sequence to the current projects) must be refunded to the FHWA, the CITY shall reimburse and pay to the STATE for and on behalf of FHWA, a sum of money equal to the total amount of STATE and Federal.

- (11) A final audit will be made of all Project records after completion of the Project and a copy will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the audit and this Agreement.
- (12) Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorney's fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorney's fees, caused by the negligent, careless or unskillful acts of the CITY, its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.

- (13) By entering into this Agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (14) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- (15) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF HUNTSVILLE, ALABAMA

City Clerk (Signature)

BY: _____

Mayor (Signature)

Kenneth Benion

Tommy Battle

Type name of Clerk

Type name of Mayor

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: Jim Ippolito by J.7.
Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

North Region Engineer, Johnny L. Harris, P.E./P.L.S.

Multimodal Transportation Engineer,
Robert J. Jilla

Chief Engineer, Don T. Arkle, P. E.

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF TRANSPORTATION

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama
this _____ day of _____, 20 _____.

GOVERNOR OF ALABAMA, ROBERT BENTLEY

RESOLUTION NUMBER _____

BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama as follows:

1. That the City enters into an Agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

Utility and construction program for Project STPHV-4514 (), Project Reference Numbers 100062237 and 100062238 for the Huntsville Northern Bypass from 1,500 feet east of SR-1 (US-231/431) intersection to Winchester Road in the City of Huntsville; which Agreement is before this Council.

2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the Agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the Agreement by all parties, that a copy of such Agreement be kept on file by the City Clerk.

Passed, adopted, and approved this _____ day of _____, 20 ____.

ATTESTED:

City Clerk

President, Huntsville City Council

Mayor

I, the undersigned qualified and acting clerk of the City of Huntsville, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the _____ day of _____, 20 _____, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the _____ day of _____, 20 _____.

City Clerk

CERTIFICATION

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

07/01/2002

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

ADR CLAUSE

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation where appropriate by private mediators.